



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

January 23, 2003

Mr. Anthony S. Corbett
Freeman & Corbett, L.L.P.
2304 Hancock, Suite 6
Austin, Texas 78756

OR2003-0449

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 175456.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received a request for "documents related to all items on the agenda for the Board of Directors meeting of 24 October 2002 that were discussed in Executive Session." You state that some responsive information will be released to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.107, 552.111, and 552.137 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.¹

First, you seek to withhold a portion of the submitted information under section 552.107 as information protected by the attorney-client privilege. Section 552.107(1) of the Government Code excepts information that an attorney cannot disclose because of a duty to the attorney's client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107(1) excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney

¹ We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. Upon review, we agree that the documents you seek to withhold under the attorney-client privilege consist of confidential communications from district staff to the district's attorney, and communications reflecting the attorney's legal advice and opinion. We have marked the information that the district may withhold under section 552.107(1) of the Government Code.

You also argue that some of the submitted information is excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office reexamined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. Open Records Decision No. 615 at 5-6 (1993). An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 at 5-6 (1993). We note that section 552.111 is applicable to communications that involve a governmental body's consultants. See Open Records Decision Nos. 631 at 2 (1995) (section 552.111 encompasses information created for governmental body by outside consultant acting at governmental body's request and performing task that is within governmental body's authority), 563 at 5-6 (1990) (private entity engaged in joint project with governmental body may be regarded as its consultant). Section 552.111 is not applicable, however, to communications with a party with which the governmental body has no privity of interest or common deliberative process. See Open Records Decision No. 561 at 9 (1990). Upon review, we agree that the submitted communications you have marked as "intra-agency policy communications" contain advice, recommendations, opinions, and other material reflecting the policymaking processes of the district. We determine that the district withhold this information, which we have marked, pursuant to section 552.111 of the Government Code. We note, however, that a portion of the information you seek to withhold under section 552.111 does not consist of advice, opinion, or recommendations regarding district policymaking matters. This information is not excepted from disclosure under section 552.111.

Finally, you also seek to withhold certain e-mail addresses of members of the public under section 552.137 of the Government Code. Section 552.137 requires the district to withhold an e-mail address of a member of the public that is provided for the purpose of communicating electronically with a governmental body, unless the member of the public has affirmatively consented to its release. You do not inform us that a member of the public

has affirmatively consented to the release of any e-mail address contained in the submitted materials. The district must, therefore, withhold e-mail addresses we have marked under section 552.137 of the Government Code.

In summary, we have marked attorney-client communications that the district may withhold under section 552.107 of the Government Code. We have also marked intra-agency policymaking communications that the district may withhold under section 552.111 of the Government Code. E-mail addresses of members of the public must be withheld under section 552.137 of the Government Code. The remainder of the submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



David R. Saldivar
Assistant Attorney General
Open Records Division

DRS/seg

Ref: ID# 175456

Enc: Submitted documents

c: Mr. John C. McLemore
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(w/o enclosures)